SECTION 18 – APPENDICES

The following Appendices attached hereto are referenced in the General Conditions and are incorporated herein.

Appendix 1 – Policy Statement for Contract/Permit Construction Safety Policy
Appendix 2 – Policy Statement for Calculating Delays and Damages
Appendix 3 – Cost Reduction/Value Engineering
Appendix 4 – Contractor's Affidavit Regarding Settlement of Claims
Appendix 5 – Form of Performance Bond
Appendix 6 – Form of Payment Bond
Appendix 7 – Dispute Resolution
Appendix 8 – Costs of the Work

City of Mesa Policy Statement No. 1
For
CONTRACT/PERMIT CONSTRUCTION SAFETY
Revised

I. BACKGROUND:

The construction industry has historically experienced one of the highest accident rates of any profession across the United States. In the past years, the City of Mesa has experienced accidents resulting in serious injuries and/or fatalities to construction workers, motorists, and pedestrians, which were directly related to construction activity.

The City of Mesa is concerned that its Construction and Maintenance Contractors, both those under contract with the City and those doing work in the City right-of-way by permit, may not be fulfilling the obligation to provide a safe working environment for workers, City employees, the motoring public, and pedestrians. The City is also concerned about the liability which may accrue to the City as a result of the unsafe acts performed by Contractors. However, the law is very clear and the City is proscribed, by the terms of the Contract/Permit, from controlling the means, methods, and sequences of operations as well as the Contractor's safety precautions and programs.

Consequently, the City has developed a Contract/Permit Construction Safety Policy, which is applicable to all Contractors performing work within the City's right-of-ways, easements or City owned property. This Policy is in addition to the terms of the Contract or Permit, does not negate any of the terms of the Contract or Permit and when there is an apparent conflict between this Policy and the terms of the Contract or Permit, the strictest rule governs.

NOTE: As used herein, the term "Contractor" shall refer to the Prime Contractor or the Permit Holder, if different from the Prime Contractor. The term "Engineer" shall refer to the City of Mesa City Engineer or his/her designated representative. The "Project Area" shall refer to the Work Site on City-owned property or within the City's right-of-way or easements. It also includes the Contractor's employee parking area, equipment and materials storage areas, plus that area required for establishment of warning signs, barricades and other traffic control devices.

II. POLICY:

A. General:

It is the City's policy that the responsibility for all aspects of safety within the Project Area rests with the Prime Contractor. In order to comply with this policy, the Contractor shall:

1. Comply with all Federal and State laws, County and City ordinances, Maricopa Association of Governments (M.A.G.) Uniform Standard Specifications for Public Works Construction, the City Traffic Barricade Manual and the terms of the Contract or Permit;

2. Employ such individuals, with the necessary authority, to develop, implement and maintain the safety precautions and programs required by the laws, ordinances, etc. in paragraph II, A, 1 to protect the Contractor's work force, City employees, the motoring public and pedestrians;

3. Obtain and maintain the insurance policies required by the Contract or Permit; indemnify, defend, and hold harmless the City of Mesa and its employees as required by the Contract or Permit; and report all lost-time accidents and injuries, as well as accidents and incidents involving the general public, and public or private agency employees, to his/her workers and the Risk Management Office (480-644-3330); and

4. Certify in writing to the Engineer, on the Contractor's letterhead, that the Contractor has read the Policy and will comply with its requirements in full and without reservation.

B. Specific Requirements:

In addition to the general requirements in Section II, A, the Contractor is responsible for the following specific requirements when they are applicable to the project:

1. Trench Safety: The Contractor shall employ a "competent person" in compliance with the Occupational Safety and Health Administration (OSHA) Standards for the Construction Industry (29 CFR 1926.650) and shall provide the name of that person to the Engineer prior to commencement of excavating. The competent person shall maintain records of the required inspections and shall provide copies of those records when requested by a City Employee.

   NOTE: City workers are prohibited from entering an unshored trench four feet or greater in depth. The Contractor shall shore, or bench or slope the side walls back to the angles required by the OSHA Standards (29 CFR 1926 Subpart P). Failure to the Contractor to comply with this section will result in cancellation of the installation, inspection, or test and may require the Contractor to obtain a new permit and/or pay for rescheduling.

2. Confined Spaces: The City has a Confined Spaces Entry Permit Procedure, which is applicable to City employees. In the event of an accident, City of Mesa Fire Department personnel would be required to respond to extricate the victim(s). Consequently, the Contractor shall develop a Confined Space Entry Procedure (City procedure may be used as a guide) and maintain at the job site the equipment required for safe entry, extraction and communications; and train the workers as to the nature of the hazards involved, necessary precautions to be taken, use the protective and emergency equipment, and procedures for obtaining help. The Contractor shall also secure all confined spaces at the end of the workday to preclude entry by unauthorized personnel. The Contractor shall assign a "competent person" to administer his/her confined spaces program.

3. Traffic Control and Barricades: The Contractor shall employ a "designated person" who shall be responsible for ensuring that all barricades, signs, safety fences, safety barriers, barricade lights, signals, and other traffic control devices are established and maintained in strict compliance with the City of Mesa Traffic Barricade Manual and the Contract or Permit requirements. The designated person shall:

   a. Inspect all barricading and traffic control devices on a regular, recurring basis and submit a daily (including weekends and holidays) report, in writing, to the Engineer of such inspections the next work day;
   b. Ensure that existing City-owned traffic signals do not conflict with barricades and signs or give misleading signals to pedestrians and motorists. The Contractor shall immediately bring conflicting conditions to the attention of the City Inspector. The Inspector will coordinate with the City's Traffic Signals Group for any required changes to traffic signal sequencing, timing, or outages;
   c. Ensure that flagmen, when employed, are trained in accordance with the OSHA Regulations (29 CFR 1926 Subpart G); and

d. Immediately respond to all call-outs by the City Inspector, the Stand-by Inspector or City of Mesa Radio Dispatch (Base Operations); cooperate with Police or Fire Department Investigators and/or emergency personnel; and on his/her own responsibility, reestablish barricades and traffic control devices as necessary.

The "designated person" required by this section may be the same as the "competent person" required for trench safety (OSHA Regulations – 29 CFR 1926.650) provided such person is qualified in accordance with OSHA Regulation (29 CFR 1926.32) for these duties.

The Contractor shall certify, by letter, that he/she has read and will comply with the requirements of the City of Mesa Traffic Barricade Manual. The Safety Certification Letter (paragraph II, A, 4 and this paragraph) must be received by the Engineer prior to start of construction. The Safety Certification should include the name of the "designated person", the name of the "competent person" (if different from the designated), telephone numbers where they can be reached 24 hours per day, and any restrictions or limitations on their duties and authorities.

4. Electric Transmission and Distribution Lines: The Contractor shall comply with the provisions of OSHA 29 CFR 1926 Subpart V – Power Transmission, OSHA Standards and the following specific requirements:

a. Underground: The Contractor shall use extreme caution when working in the vicinity of any underground electric lines. NOTE: All lines shall be considered lethal regarding electrical shock.

The Contractor shall ensure that its firms, as well as all Subcontractors, comply fully with the Arizona Blue Stake Law (A.R.S. Chapter 2, Article 6.3, Sections 40-360.21-31). The Contractor shall call the Blue Stake Center (602-263-1100) prior to any excavation.

The Contractor shall ensure that all employees are instructed in the proper methods of excavation in and around any underground utility lines or equipment. The Contractor shall not allow an individual to be left unsupervised while excavating the vicinity of any underground power line for any reason.

The Contractor shall notify the electric utility anytime it has uncovered or exposed any underground electric lines. The Contractor or its Subcontractors shall not under any circumstances open or enter an electric utility vault or manhole. Arrangements shall be made with the electric utility for any work necessary under the Contract to move or relocate any electrical underground facilities.

NOTE: The City of Mesa Parks Recreation and Commercial Facilities Department is not a member of Blue Stake. The Contractor shall contact this Department prior to excavating in the City park or park retention basin.

b. Overhead: A number of electric utility companies have overhead power lines within the City of Mesa. The Contractor shall visually inspect the Project Site prior to commencement of construction and ascertain which of these agencies have overhead power in the area. The Contractor shall contact the serving agency to arrange a meeting on-site to discuss the requirements of the Contractor and the utility. The on-site meeting shall include discussions of, but not limited to, the following.

(1.) Pole bracing
(2.) Stand-off distances
(3.) De-energizing or insulating power lines
(4.) Ground clearance
(5.) Working or line clearances with utility dispatchers
(6.) Notification

If the work involves issuance of a license or clearance from the electric utility, the Contractor shall comply with the requirements of the license or clearance. A.R.S. Chapter 2, Article 6.4, Sections 40-360.41-45 govern safety around high voltage lines. The Contractor shall comply with the law or the requirements of the utility company whichever is most stringent.

5. Gas Lines: Several natural and nitrogen gas utility companies operate and maintain underground gas lines within the City of Mesa. The Contractor shall call the Blue Stake Center (602-263-1100) prior to excavation. The Contractor shall ascertain which gas company is responsible for the line in the Work Area and arrange an on-site meeting to discuss the project.

The Contractor shall comply with all necessary safety standards as dictated by the particular job but at no time any less than the minimum Federal Safety Standards (49 CFR 192.615) when working around gas lines.

When working in the vicinity of City of Mesa gas lines, the Contractor shall comply with the City of Mesa Gas Procedures Manual. At a minimum, the Contractor shall pothole well ahead of its excavation operation, expose the gas line to ascertain its location and elevation, and call (480-644-2261) for a check-and-wrap. The Contractor shall not cover the gas line until the City of Mesa Utilities Construction Gas Inspector has inspected it. The Contractor shall notify Utility Construction of any interruptions to service and shall not attempt to relight any pilot lights.

Failure to comply with the requirements of this section mandates a report to the Arizona Corporation Commission (A.C.C.). The Contractor may be cited by the A.C.C.

6. Flooding: There is a potential for flooding, particularly of streets, easements, parks, etc. in many parts of Mesa. Flooding of streets is particularly hazardous to motorists and shall be avoided whenever possible. Consequently, the Contractor shall protect its work from flooding and shall not, by its means, methods, or sequence of operations, increase the flood potential or severity either in the public right-of-way, easement, and City property or on private property.

7. Hazardous Materials: “Hazardous Materials” means a substance which, by reason of being explosive, radioactive, flammable, poisonous, corrosive, oxidizing, irritating, or otherwise harmful, is likely to cause death or injury. The Contractor shall properly dispose of all hazardous material in accordance with EPA and ADEQ guidelines and shall not dispose of hazardous material in the City’s sanitary or storm sewer system (A.R.S. 49-261-263 and 49-923-925).

   In the event of an accidental spill, the Contractor shall notify the Fire Department by the most expeditious means possible (dial 911). The Contractor shall attempt to contain the spill, prevent it from entering the storm sewer system or natural drainage, and cooperate with the Fire Department in mitigating the damage and protecting the public.

8. Miscellaneous: The following miscellaneous safety practices involving Contract Construction are designed to provide a measure of protection to the public:

   a. Streetlights: Through the construction, a close approximation of the existing level of illumination must be maintained. If the project involves installing new streetlights and removing the old, the existing streetlights shall not be removed until the new lights are energized. The old streetlights shall not be de-energized without the express consent of the Streetlight Systems Supervisor. Pole base excavations shall be suitably covered and barricaded with lighted barricades until concrete is poured and shall remain barricaded until the pole is erected. NOTE: The Contractor or its Subcontractor shall notify the electric utility during the removal or erection of any streetlight poles in the immediate vicinity of any overhead power lines. (See paragraph II, B, 4, b above).

   b. Traffic Signals: Existing traffic signals shall remain in service during construction unless the plans specifically require otherwise or the express consent has been given by the Signal Systems Supervisor. Traffic signal base excavations shall be covered and barricaded until the concrete is poured and shall remain barricaded until the pole is erected.

   c. Repairs to curbs, gutters, sidewalks, and driveways: To eliminate tripping hazards, the Contractor shall be required to remove and replace any concrete which has displaced vertically ¼ inch or more. The Contractor shall also remove and replace any existing concrete, which has been cracked or broken during, and due to, the Contractor’s operation whether it has displaced vertically or not.

   d. Water valves and fire hydrants: Except in emergencies, the Contractor shall not turn any valves that are a part of the City’s system or inter-tie valves between the City system and the new installation. Newly installed fire hydrants and out-of-service fire hydrants will be denoted by an Out-of-Service ring. The ring will be installed by the Inspector and shall not be removed until directed by the Inspector.

   e. Emergency Access: the Contractor shall at all times maintain access to all medical treatment facilities in the project area. The Contractor shall also maintain, in good, all weather conditions, access to all parts of the project area to permit ambulances and fire rescue vehicles ingress and egress.

f. Potential Hazardous Energy Sources: Hazardous Energy Sources include but are not limited to electrical, pneumatic, hydraulic, gas, and water pressure. Contractors shall have a program and procedures that meet the needs of their particular work. This program shall require energy control procedures to be used to control potentially hazardous energy sources whenever workers perform activities covered by this program. The Contractor shall inform the City of Mesa of his/her work on potentially hazardous energy sources, and ensure that his/her personnel understand and comply with requirements of the Contractor's program and procedures.

This policy shall become effective 27th Day of February, 2013.

s/ Elizabeth Huning s/
Elizabeth Huning, P.E.
City Engineer
City of Mesa

City of Mesa Policy Statement No. 2
For
CALCULATING DELAYS AND DAMAGES
Revised

The purpose of this policy statement is to establish guidelines and procedures for negotiation between the Contractor and City of Mesa relating to compensation for delays pursuant to Arizona Revised Statutes (A.R.S.) 34-221(F). This policy statement contains notice requirements in addition to those set forth in the Contractor Documents, and shall be the Contract Provision contemplated by that statute.

NOTE: As used herein, the term "Engineer" shall refer to the City of Mesa City Engineer or his/her designated representative. Nothing in this Policy Statement shall be construed to void any provision in the Contract which requires timely notice of delays or provides for arbitration or any other procedure for settlement or provides for liquidated damages.

I. TYPES OF DELAYS:

For the purposes of this document, there are essentially four types of delays encountered by City of Mesa Construction Contractors; excusable/compensable, excusable/non-compensable, non-excusable, and concurrent. Only delays that extend Contract Completion Time set forth in the Contract Document will be considered for issues relating to Contract extensions or additional compensation. All other delays are considered to be activity delays and do not entitle the Contractor to either time extensions or additional compensation. Contract Completion Time shall be defined as the date set forth in Maricopa Association of Governments (MAG) Uniform Standard Specification Section 101 and as may be modified by the Contract Documents.

A. Excusable/Compensable:

These are delays caused solely by the City's actions or inactions, are unreasonable under the circumstances, and which were not within the contemplation of the parties to the Contract at or prior to the time of execution of the Contract. Since the Contractor presumably has no control over the events causing the delay, he may be entitled to both contract time extensions and additional compensation for delay damages. Further, he/she may be entitled to additional compensation from the impact of that delay on other work. Examples of excusable/compensable (E/C) delays include: failure to properly locate/Blue Stake an underground City-owned utility within 2 feet of the actual location; failure to relocate City-owned utilities far enough in advance of construction in an area where the Contractor is scheduled to work that it delays start or completion of the Contractor's regularly scheduled work; failure to provide City-furnished equipment or materials in a timely manner if required by the Contract; failure to acquire necessary Right-of-Way or Public Utility Easements prior to the Contractor beginning Work in the area; failure to timely return Shop Drawings or other Contract Submittals in accordance with the Contract; unreasonable delay by the City in making decisions which affect critical activities; surveying errors when the City is contractually responsible for providing Project Surveying. This list is not meant to be all inclusive but is intended merely as examples of the type of City action or inaction which can result in a Contractor's claim for additional time and compensation.

B. Excusable/Non-compensable:

These are delays over which neither the City nor the Contractor had control. Since both parties to the Contract have been potentially damaged by the delay but neither have caused it, only Time Extensions are warranted. Examples of excusable, non-compensable (E/N) delays include: usually severe weather; fire; acts of God; failure of non-City owned utilities (SRP, CenturyLink, Cable TV, Southern Pacific Railroad, El Paso Natural Gas and Southwest Gas, etc.) to properly or timely locate/Blue Stake accurately; failure of non-City owned utilities to relocate in advance of construction; the voluntary or involuntary filing for Bankruptcy protection by a Supplier or Subcontractor which causes the Supplier/Subcontractor to fail to meet a contractual deadline provided the Contractor can provide documentation that he/she executed the required Purchase Orders/Subcontract Agreements and received delivery schedules which, if met, would have eliminated the delay; delays as a result of an incomplete shutdown of a City or non-City owned utility main (the City does not guarantee a complete shutdown). This list also is not necessarily all inclusive but merely indicative of type and class of E/N delays.

C. Non-excusable/Non-compensable:

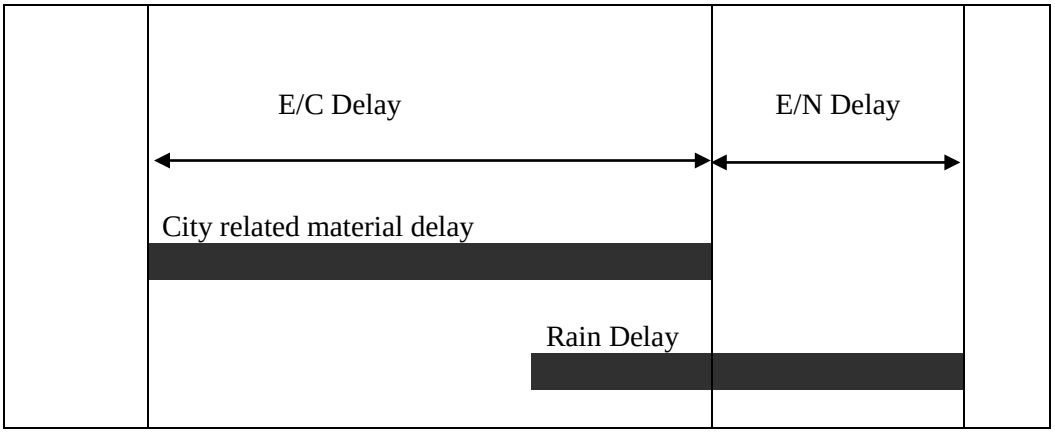
These are delays caused by the actions or inactions of Contractor or an officer, employee, agent, Subcontractor, Supplier or any other party for whom the Contractor is responsible. Since the Contractor has assumed responsibility for the risks associated with the events that caused the delay, he/she are not entitled to either time extensions or monetary delay damages. All non-excusable delays are also non-compensable. Examples of non-excusable, non-compensable (N/N) delays include: failure to perform by the Contractor, its Subcontractors and/or Suppliers (except as noted in section I.B above); failure to provide adequate labor, materials, and/or equipment on the Project; failure to perform contractually-required coordination with utilities, agencies and other Contractors; failure to notify the Engineer, in writing, of delay impacts within two working days, as required by MAG 104.2.3, or the next work day, as required by MAG 109.8.2; failure to timely submit Shop Drawings; failure to pothole or otherwise visually locate utilities sufficiently ahead of the Work to allow the Engineer to direct corrective action when necessary; delays due to retesting of previously failed work, re-inspection, and/or restaking resulting from faulty workmanship, poor quality control, or lack of compliance with Contract Specifications. Again this list is not necessarily all inclusive.

D. Concurrent:

When two or more delays occur simultaneously or overlap, each delay is analyzed separately to determine its impact on the overall project completion date based on when that delay started. Once again, only those delays which actually extend the contract completion time are considered as delays. The concurrent delay is considered an additional delay only to the extent it prolongs the delay to the Contract Completion Time beyond the date that the one it is concurrent with had already delayed that date. For example, if two delays are concurrent, and one is five days long and the second is seven days long, the second concurrent delay will only extend the Contract Completion Time by two days. The same method of analysis is used when there are multiple concurrent delays. Only those extending the Project Completion Date are considered to be delays for the purposes of this policy. The portion of each concurrent delay that delays the completion of the work is classified in the same manner as described previously for individual delays and being either E/C, E/N or N/N.

An example of a concurrent delay is where the City delays furnishing material but the Contractor could not have installed it anyway due to unusually severe weather. The effect of the first delaying activity will extend for the full duration and shall be considered controlling on the Contractor's schedule. A subsequent, concurrent delay shall thereafter only be considered to effect the project completion (if at all) once the first delaying activity has ceased to impact the project completion. In this case, if the unusually severe weather continued and delayed the work after the material was delivered, the first portion of the delay would be classified E/C (delay for material) and the second as E/N (delay due to unusually severe weather). Using the procedure set forth above, the entire concurrent portion would be considered E/C as shown in the chart which follows.

Example of a Concurrent Delay:



II. ANALYZING THE DELAY:

The Contractor shall provide all documents required or requested by the Engineer to analyze the delay(s). It is important to understand that, prior to the delay analysis, delays and their impacts are alleged issues. The information the Contractor provides will be compared with the Inspector's Daily Log, Schedules and other available Project information and together they will support or refute that delays occurred and, if so, how they impact other work and the overall project completion. The Contractor's delay in providing these documents shall be considered prima facie evidence that either the delay did not occur or it did not impact the Project Completion Date and any claim for time extension or damages shall be denied.

The Engineer will accept delay analyses in CPM format, as these may demonstrate to his/her satisfaction whether or not Project Completion has been impacted by a specific event. If the Contractor chooses not to use CPM scheduling procedures, then the burden will be on the Contractor to prove to the Engineer's satisfaction that the Project Completion has been impacted. The procedures below assume that the Contractor is using CPM scheduling methods. As a minimum the Contractor shall provide the following materials to the Engineer:

A. As Planned Schedule. The initial construction schedule, required by the Contract Documents, shall be considered the baseline schedule. It is to the Contractor's advantage that the as-planned (baseline) schedule be as detailed as possible in order for delays, as they occur, to be incorporated into the schedule in representative locations. It is also to the Contractor's advantage to use a computer software program to generate the schedule since updated schedules are required monthly by the Contract Documents and since updated schedules are required to support delays and requests for additional compensation for delays. The as-planned (baseline) schedule shall be presented in network format which clearly shows the interrelationships of the activities. The Contractor shall also provide a printout of the activities showing early start, early finish, late start, late finish, duration and float. The activity list printout shall also indicate predecessor and successor activities.

B. As-Built Schedules. The as planned (baseline) schedule shall be updated with complete progress-to-date information (actualized) up to the date of the start of the alleged delay. Each updated schedule will serve as the as-built schedule for analyzing the alleged delay and provide a new baseline as-planned schedule for the next delay. This process shall be repeated for each alleged delay as it occurs. In updating the baseline schedule, the alleged delay shall be treated as an activity and inserted into the schedule as a predecessor to the impacted activity (ies). When an activity that has already started is impacted, it is preferable to divide this activity into two parts and show the impact affecting the second part. For schedules which incorporate a time line (or data date), the delay activity shall be inserted at the time it actually occurred. Some software scheduling programs have a PAUSE-RESUME feature that can be used to facilitate the requirements. The updated schedule shall also be accompanied by a listing of activities as with the baseline schedule. This activities list shall contain the alleged delay as an activity showing the duration and the activities which are predecessors and successors to it. When computer generated schedules are used, the Contractor shall provide, in electronic media format, the complete data files for the updated schedule that included the delay activity, preferably either in Suretrak or in Microsoft Project. Each electronic media shall contain a label identifying the Project name, Contractor's name, program name and version number, data date and project finish date.

C. Other Documents: In order to determine the amount of the alleged delay and if it is compensable, the Contractor shall provide all backup documentation germane to the issue and as required by the Engineer. This documentation shall include copies of such items as: purchase orders; delivery schedules; correspondence; memoranda of telephone calls; force account daily worksheets (initialed by the Inspector); payroll data; estimating (bid) worksheets; and any other materials which may be requested by the Engineer.

D. Procedure: Only after receipt of sufficient documentation will the Engineer analyze each alleged delay and determine if it is supported or refuted. If supported, the Engineer will determine if it is excusable or non-excusable, compensable or non-compensable. If the Engineer determines that the delay did not affect the Project Completion, the as-planned schedule, which has been updated to the date of the alleged delay, shall be revised to indicate this. If the Engineer determines the delay did occur but was N/N, then no time extension shall be granted. It is imperative that an actualized schedule be submitted as soon as the occurrence of the alleged delay is known. In no event shall the Contractor submit an actualized updated schedule later than 60 days after the occurrence of the alleged delay becomes known.

If the Engineer determines the delay did occur and was excusable but, due to a reason listed in section I.B. is non-compensable, he/she will determine the length of the E/N delay and prepare a Change Order to add that time to the Contract. The Engineer's decision shall be final.

If the Engineer determines the delay was excusable and compensable, he/she will determine the length of the E/C delay and proceed to review the Contractor's damage calculations in accordance with Section III. The Engineer will check the Contractor's calculations, review the backup documentation provided, and prepare a Change Order to cover both the additional compensation and the time extension. The Engineer's decision on both the time extension and additional compensation for the delay shall be final.

If the issue involves a concurrent delay, the Engineer will analyze available data to determine the portions which are E/C, E/N, and/or N/N as described above. The Engineer will proceed to determine the length of E/C delay and verify the Contractor's delay damage calculations, if any are provided. Upon completion of this review, the Engineer will prepare a Change Order for the Contractor's review and signature. The Engineer's decision regarding excusable delay and additional compensation for the delay is final.

The amount of time the Engineer will require to analyze the alleged delay(s) will depend upon the Engineer's workload, the complexity of the delay analysis, availability of supporting data, extent of cooperation by the Contractor, and other factors beyond the Engineer's control. It is entirely possible other delay(s) may occur while the Engineer is analyzing particular claim for delay(s). The Engineer's failure to respond to the Contractor in a set period of time shall not be used as the basis for a further delay claim or as justification for extending and existing delay claim. The time required for delay analysis by the Engineer shall not be counted against the time allotted for processing Final Payment as required by (MAG Section 109.7(B)) or the release of retention and Final Payment as prescribed by A.R.S. Arizona Revised Statutes §34-221.

III. CALCULATING MONETARY DELAY DAMAGES:

Additional compensation for delay, when authorized by the Engineer, will be calculated in accordance with MAG Section 109.5 ACTUAL COST WORK with the following exceptions:

A. No additional compensation or other monetary damages shall be awarded or paid for any loss of anticipated profits by the Contractor, Subcontractors or Suppliers.

B. No additional compensation or other monetary damages shall be awarded for home office overhead or non-project general conditions of the Contractor, Subcontractors or Suppliers.

C. Equipment:

1. Contractor-owned equipment rate calculations shall be computed in accordance with Section 109.04(D)(3), Arizona Department of Transportation "Standard Specifications for Road and Bridge Construction," 2008 or latest edition and as modified herein. Year and regional adjustment factors shall be based on the most recent publications of the Rental Rate Blue Book for Construction Equipment, published by the Equipment Guide-Book Company, San Jose, CA, same as provided by ADOT and in print as of the date of alleged delay. In no event shall the compensation for Contractor-owned equipment exceed the purchase price, including tax, paid by the Contractor for the equipment. Compensation shall not be allowed for small tools or equipment that show a daily equipment rental rate of less than $5.00 per day or for unlisted equipment that has a value of less than for hundred dollars ($400.00).

2. For leased and rented equipment or equipment not otherwise listed in the Blue Book, rental contracts, or other supporting data will be used to establish the hourly rate. No hourly operating expense shall be allowed for delay on standby equipment. In no case will equipment be considered for rental which exceeds the hourly rate for the first eight hours and the daily rate divided by eight for all additional hours as compared with similar equipment listed in the Blue Book. The hourly standby rate shall be computed as the lesser of:

    a. Dividing the monthly invoice or rental value by 176 hours per month when the equipment is utilized by the Contractor for more than three weeks;

    b. Dividing the monthly invoice or rental value by 40 hours per week when the equipment is utilized by the Contractor for more than three days.

    In no event shall compensation be paid for delay at more than 8 hours per day or 40 hours per week.

3. Except for vehicles used by supervisory personnel, all equipment shall be paid at the “standby” rate during the delay period.

4. Equipment brought solely to mitigate the delay (such as pumps, light plants, etc.) may be paid in accordance with ADOT section 109.04(D) (3).

5. The Blue Book regional adjustment shall apply in determining rental rates.

D. Material:

Allowable material charges may include, in addition to material incorporated in the work material used to mitigate the delay such as barricades, plates, shoring, cold mix, etc. Except in emergencies the Contractor shall not employ such material without the prior written approval of the Engineer.

E. Labor:

1. Except for Supervisory Personnel (Superintendent, Project Engineer, and Foremen), labor wages shall not be paid after the first one-half day of claimed delay or impact. It is expected the Contractor will reassign or layoff unneeded employees.

2. For Foreman wages to be included, that Foreman must have been actively employed on the project prior to the commencement of the delay and be directly responsible for the activity being delayed.

3. Labor burden shall be actual amounts incurred but shall not exceed the ADOT approved rate.

F. All costs (equipment, material, and labor) shall be substantiated by the City of Mesa’s Daily Work Reports.

IV. DOCUMENT REQUIRED FOR CLAIM ANALYSIS:

For purposes of reviewing the Contractor's request for additional compensation, it will be required that the Contractor submit the following listed information. Information requested shall be prepared on forms which are substantially similar to the City of Mesa's Daily Work Report form, a copy of which is attached as an exhibit.

A. Labor:

For each employee, laborer, and foreman, for which compensation is requested: Name, classification, dates of work performed, daily hours worked, total hours worked, labor rates, labor burden rates, overtime or premium time charges. Further, the Contractor shall make available for inspection and copying to the Engineer the following listed documentation.

1. Certified payroll reports for the period of work claimed.
2. Accounting of Fringe Benefits – certified by a CPA.
3. Contractor's and Subcontractor's daily field reports and daily diaries.

B. Materials:

For all materials for which compensation is requested, if any, total quantities of materials, prices, extensions and transportation costs shall be provided on a daily basis. Further, the Contractor shall make available for inspection and copying to the Engineer the following listed documentation.

1. Invoices for all materials incorporated.
2. Weigh tickets.
3. Purchase orders.
4. Delivery schedules.
5. Quotes or proposals from manufacturers or supplier.
6. Freight bills, Bills of Lading, or other documentation to show transportation costs.
7. Restocking charges-invoices from vendor.

C. Equipment:

For all equipment, the Contractor shall provide the Engineer with the designation, dates and hours of usage, dates and hours of standby, if any, daily hours, total hours, rental rates and extension for each unit of equipment and machinery. Rental rates shall be as established in Section III. Further, the Contractor shall make available for inspection and copying to the Engineer the following listed documentation.

1. Owned:
   a. Purchase contracts(s).
   b. Depreciation schedule(s).
   c. Invoices for fuel, lube, repairs and other operating costs.

2. Leased:
   a. Lease agreement with hourly rate, overtime rate, double shift rate, etc.
   b. Invoices or other documentation showing hours worked on a daily basis.

D. Subcontractors/Owner-Operators:

In the event the Contractor submits a claim which includes requests for compensation for Subcontractors of Owner-Operators, the same information requested of the Contractor shall be provided by the Subcontractor/Owner-Operator. Further, the Contractor shall make available for inspection and copying to the Engineer the following listed documentation.

1. Bid/Estimate work sheets and/or spreadsheets.
2. Subcontract Agreements or Agreements with Owner-Operator.
3. All invoices and billing statements received from the Subcontractor/Owner-Operator which relates to the amount requested.

E. Miscellaneous:

Further, the Contractor shall make available for inspection and copying to the Engineer the following listed documentation.

1. Evidence of payment for bonds and insurance premiums (MAG 109.5.6).
2. Taxes – unless the Contractor can show otherwise, taxes are reimbursable at 65% of the total cost (less bonds and insurance).

V. TIME LIMIT ON SUBMISSIONS OF CLAIM FOR DELAY OR IMPACT DAMAGES:

No claims for delay or impact damages shall be considered or allowed more than 45 days after the event or occurrence which the Contractor claims gives rise to the delay or impact. In no event will a claim for delay or impact damages be considered after submission by the Contractor of the Final Payment Request.

Attachment – Daily Work Report Sheet

Approved as to form and content this 27th day of February, 2013.

s/ Elizabeth Huning s/
Elizabeth Huning, P.E.
City Engineer
City of Mesa

Write to: City of Mesa Engineering Construction
PO Box 1466
Mesa, AZ 85211-1466

or

Call: 480-644-2253

City of Mesa Policy Statement No. 3
For
COST REDUCTION INCENTIVE PROPOSALS
Revised

The Contractor may submit to the Engineer proposals for modifying the Plans, Specifications, or other requirements of the Contract for the sole purpose of reducing the total cost of Project construction. The proposals shall not impair in any manner the essential functions or characteristics of the project; including but not limited to service life, economy of operations, ease of maintenance, desired appearance, compatibility with existing or planned equipment, standardization of systems, or design and safety standards.

It shall not be inferred from this Policy that the Engineer is required to consider any proposal submitted.

Submissions that propose changes in the basic design of a bridge, propose changes in pipe line size, materials, bedding conditions, pipe specifications; or that propose any change in pavement design will not be considered.

Proposals submitted pursuant to this Policy shall be identified as Cost Reduction Incentive Proposals. They shall be submitted in writing and, at a minimum, contain the following.

1. Complete the attached or similar cost reduction incentive proposal form.

2. A description of both the existing Contract Requirements for performing the work and the proposed changes.

3. All Engineering Drawings and computations necessary for the thorough and expeditious evaluation.

4. An itemization of the existing Contract Requirements that must be changed if the Proposal is adopted and a recommendation as to the manner in which the change should be made.

5. A detailed estimate of the cost of performing the Work under the existing Contract and under the proposed changes, including the cost of developing and implementing the changes.

6. The Contract items affected by the proposed changes and any variations in quantities resulting from the changes.

7. An objective estimate of any effects the proposal will have on collateral cost to the City, costs of related items, and cost of maintenance and operation.

8. A statement as to the effect that the Proposal will have on the time for the completion of the Project.

9. A statement as to the time by which a Change Order adopting the Proposal must be executed or when the Engineer must have given verbal approval.

Proposals will be processed expeditiously; however, the City will not be liable for any delay in acting upon any Proposal nor for any failure to accept any Proposal pursuant to this Special Provision.

The Engineer will be the sole judge of the acceptability of a Proposal and of the estimated net savings in construction costs from the adoption of all or any part of the Proposal. The Contractor will be notified in writing by the Engineer as to whether his/her Proposal has been accepted. The decision by the Engineer is final.

When the City deems such action to be appropriate, it reserves the right to require the Contractor to share equally in the cost to the City of investigating, evaluating, and processing the proposal as a condition for the consideration of such Proposal. Such cost shall be shared whether the Proposal is accepted or rejected. When such a condition is imposed, the City shall estimate these costs and the Contractor shall indicate his acceptance thereof in writing. Such acceptance shall authorize the City to deduct the Contractor's share of the costs from any monies due or that may become due to the Contractor under the Contract.

If the Contractor's Proposal is accepted in whole or in part, the necessary Contract Modifications and Contract Price Adjustments will be affected by the execution of a Change Order which will specifically state that it is executed pursuant to this Special Provision.

The Contractor shall continue to perform the work in accordance with the requirements of the Contract until a Change Order incorporating the Proposal has been executed or until he/she has been given verbal approval by the Engineer that his/her Proposal has been accepted. If the Change Order has not been executed or he/she has not been given verbal approval on or before the date specified on the attached cost reduction incentive proposal form or on or before such other date as the Contractor may have subsequently specified in writing, the Proposal shall be deemed to be rejected.

The executed Change Order shall incorporate the changes in the Plans, Specifications, or other requirements of the Contract which are necessary to permit the Proposal, or such part of it which has been accepted, to be put into effect, and shall include any condition – upon which the City's approval thereof is based, if such approval is conditional. The executed Change Order shall also extend the time for the completion of the Contract if such an extension has been deemed to be warranted by the Engineer as a result of his evaluation of the Proposal.

The executed Change Order shall also establish the estimated net savings in the cost of performing the Work attributable to the Proposal effectuated by the Change Order. In determining the net savings the right is reserved to the Engineer to disregard the Contract bid prices if, in his/her judgment, such prices do not represent a fair measure of the value of the Work to be performed or to be deleted. The net savings will be established by determining the Contractor's cost of performing the Work, taking into account his/her cost of developing the Proposal and implementing the change, and reducing this amount by any ascertainable collateral costs to the City. The executed Change Order shall provide that the Contractor be paid 50 percent of the estimated net savings amount.

The executed Change Order shall also provide for the adjustment in Contract prices. Contract prices shall be adjusted by subtracting the City's share of the accrued net savings.

The amount specified to be paid to the Contractor in the executed Change Order which effectuates a Cost Reduction Proposal shall constitute full compensation to the Contractor for the Cost Reduction Proposal and the performance of the work thereof pursuant to the said Change Order.

Upon acceptance of a Cost Reduction Incentive Proposal, any restrictions imposed by the Contractor on its use or on disclosure of the information shall become void, and the City thereafter shall have the right to use all or any part of the Proposal without obligation or compensation of any kind to the Contractor.

Approved by: s/ Elizabeth Huning s/ Date _____
City Engineer

s/ Rob Kidder s/ Date _____
Assistant City Engineer

COST REDUCTION INCENTIVE PROPOSAL FORM

From:

To:

Project Name and Number:

Date:

Summary of Change (Brief description of proposed change including advantages and disadvantages):

ESTIMATED COST SUMMARY (Attached detailed estimate):

A.	Original Cost:	$ _____
B.	Proposed Cost:	$ _____
C.	Construction Savings (A-B):	$ _____
D.	Gross Savings (Included OH %, Bond %)	$ _____
E.	Contractor Implementing Costs:	$_____
F.	City Implementing Cost:	$_____
	Reduction in Contract Price (C+D-E-F) x 50%:	$ _____

Date by which a Change Order must be issued so as to obtain maximum cost reduction:

CITY OF MESA, ARIZONA

ENGINEERING DEPARTMENT

CONRACTOR'S AFFIDAVIT
REGARDING

SETTLEMENT OF CLAIMS

Part 100, Section 109, General Conditions

Mesa, Arizona
Date _____

Project No.

To the City of Mesa, Arizona

This is to certify that all lawful claims for materials, rental of equipment and labor used in connection with the construction of the above Project, whether by Subcontractor or claimant in person, have been duly discharged.

The undersigned, for the consideration of $ _____, as set out in the final pay estimate, as full and complete payment under the terms of the Contract, hereby waives and relinquishes any and all further claims or right-of-lien under, in connection with, or as a result of the above described Project. The undersigned further agrees to indemnify and save harmless the City of Mesa against any and all liens, claims of liens, suits, actions, damages, charges and expenses whatsoever which said City may suffer arising out of the failure of the undersigned to pay for all labor, performance and materials furnished for the performance of said installation.

Signed and dated at _____, this _____ day of _____, 20_____.

_____
Contractor

_____
By

STATE OF ARIZONA)
) ss
County of Maricopa)

The foregoing instrument was subscribed and sworn to before me this _____, day of _____, 20 _____.

_____
Notary Public

My Commission Expires:
_____

STATUTORY PERFORMANCE BOND PURSUANT TO TITLE 34 CHAPTER 2, ARTICLE 2, OF THE ARIZONA REVISED STATUTES

(Penalty of this Bond must be 100% of the Contract Amount)

That, **"Contractor Name"** (hereinafter called the Principal), as Principal, and **"Bond Company"**, a corporation organized and existing under the laws of the State of _____ and duly licensed and possessing a certificate of authority to transact surety business in the State of Arizona, with its principal office in the City of _____ (hereinafter called the Surety) as Surety, are held and firmly bound unto the City of Mesa (hereinafter called the Obligee) in the amount of **"Currency Text" ("Contract Amount")** for the payment whereof, the said Principal and Surety bind themselves, and their heirs, administrators, executors, successors, and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has entered into a certain written Contract with the Obligee dated the _____ day of _____, 20____, to construct **"Project Title," "Project Number,"** which Contract is hereby referred to and made a part hereof as fully and to the same extent as if copied at length herein.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, that if the principal faithfully performs and fulfills all of the undertakings, covenants, terms, conditions and agreements of the Contract during the original term of the Contract and any extension of the Contract, with or without notice to the surety, and during the life of any guaranty required under the Contract, and also performs and fulfills all of the undertakings, covenants, terms, conditions and agreements of all duly authorized modifications of the Contract that may hereafter be made, notice of which modifications to the surety being hereby waived, the above obligation is void. Otherwise it remains in full force and effect.

PROVIDED, HOWEVER, that this bond is executed pursuant to the provisions of Title 34, Chapter 2, Article 2, Arizona Revised Statutes, and all liabilities on this bond shall be determined in accordance with the provisions of Title 34, Chapter 2, Article 2, Arizona Revised Statues to the extent as if it were copied at length in this Agreement.

The prevailing party in a suit on this bond shall recover as a part of the judgment reasonable attorney fees that may be fixed by a judge of the court.

Witness our hands this _____ day of _____, 20_____.

"Contractor Name"
PRINCIPAL SEAL

_____
AGENCY OF RECORD

By _____

_____
AGENCY ADDRESS/PHONE/FAX

"Bond Company"

SURETY

_____

By _____

STATUTORY PAYMENT BOND PURSUANT TO TITLE 34 CHAPTER 2, ARTICLE 2, OF THE ARIZONA REVISED STATUTES

(Penalty of this Bond must be 100% of the Contract Amount)

That, **"Contractor Name"** (hereinafter called the Principal), as Principal, and **"Bond Company"**, a corporation organized and existing under the laws of the State of _____ and duly licensed and possessing a certificate of authority to transact surety business in the State of Arizona, with its principal office in the City of _____ (hereinafter called the Surety) as Surety, are held and firmly bound unto the City of Mesa (hereinafter called the Obligee) in the amount of **"Currency Text" ("Contract Amount")** for the payment whereof, the said Principal and Surety bind themselves, and their heirs, administrators, executors, successors, and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has entered into a certain written Contract with the Obligee dated the _____ day of _____, 20____, to construct **"Project Title," "Project Number,"** which Contract is hereby referred to and made a part hereof as fully and to the same extent as if copied at length herein.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, that if the principal promptly pays all monies due to all persons supplying labor or materials to the principal or the Principal's Subcontractors in the prosecution of the Work provided for in the Contract, this obligation is void. Otherwise it remains in full force and effect.

PROVIDED, HOWEVER, that this bond is executed pursuant to the provisions of Title 34, Chapter 2, Article 2, Arizona Revised Statutes, and all liabilities on this bond shall be determined in accordance with the provisions of Title 34, Chapter 2, Article 2, Arizona Revised Statues to the extent as if it were copied at length in this Agreement.

The prevailing party in a suit on this bond shall recover as a part of the judgment reasonable attorney fees that may be fixed by a judge of the court.

Witness our hands this _____ day of _____, 20_____.

"Contractor Name"
PRINCIPAL SEAL

_____
AGENCY OF RECORD

By _____

_____
AGENCY ADDRESS/PHONE/FAX

"Bond Company"

SURETY

_____

By _____

DISPUTE RESOLUTION

A. INFORMAL DISPUTE RESOLUTION

The parties to the Contract agree that time is of the essence in relation to performance of the Contract and completion of the Project, therefore any and all disputes in relation to the Contract will initially be referred to the Project Manager, the Design Professional Representative and/or the Contractor Representative as applicable to the dispute, for immediate resolution. If, after good faith efforts to reach a resolution, none is reached, any party to the dispute may submit the dispute to the Dispute Resolution Representative ("DRR") process set forth below, which is intended to be an expedited process.

B. DISPUTE RESOLUTION REPRESENTATIVE ("DRR") PROCESS

1. The Parties under the Contract agree that all claims and disputes in relation to the Project which are not resolved in the ordinary course of the Project ("Claim" or "Claims") shall, as a prerequisite to any mediation, or litigation of the Claim, first be submitted for resolution between the designated Dispute Resolution Representatives of the Parties as set forth herein (the "DRR Process").

2. The DRR Process shall be initiated through service of a DRR Notice as set forth below:

    a. For claims by the Contractor or the Design Professional, the DRR Process shall be initiated by the party asserting the claim serving written notice on the City setting forth in detail: (i) the basis for the claim; (ii) the effect of the Claim upon the construction of, and/or Project Schedule for, the Project; (iii) the specific relief requested, the amount thereof, and how such was calculated; (iv) the parties involved in the Claim, and how they are involved; (v) the specific contract provisions in the Contract Documents (including, if applicable, drawings and specifications) which apply; and (vi) efforts made to date to resolve the Claim.

    b. For claims by the City, the DRR process will be initiated by the City providing written notice to the other parties of the basis and amount of its claim, the parties involved in the Claim, and how they are involved, the provisions in the Contract Documents that apply, and the relief requested.

    c. The DRR Notice shall be hand-delivered and e-mailed to the other parties' designated Dispute Resolution Representatives.

3. The other parties shall respond in writing to the DRR Notice ("DRR Response") within ten (10) calendar days of receipt of the DRR Notice, setting forth those items set forth in the DRR Notice that they agree with, dispute, and/or have questions concerning. The DRR Response shall be hand-delivered and e-mailed to the other parties' Dispute Resolution Representatives.

4. The designated Dispute Resolution Representatives for the Parties to the claim shall then meet as soon as possible and in any event within twenty (20) calendar days of submission of the DRR Notice (regardless of whether a DRR Response has been submitted by all parties involved in the dispute), at a mutually agreed upon time and place, to attempt to resolve the Claim based upon the DRR Notice and DRR Response.

5. At any time after the first meeting required above, either party may terminate the DRR Process by written notice to the other party.

6. The parties may agree, in writing, to extend or modify the time limits or other provisions of the DRR process in relation to a specific pending Claim.

7. Unless otherwise designated in a written notice to the other parties, the Assistant City Engineer and the representatives of the Contractor and of the Design Professional shall act as the parties' designated Dispute Resolution Representatives.

8. If a resolution of the Claim is reached, that resolution shall be set forth in writing and shall be signed by the Parties' designated Dispute Resolution Representative. If the resolution involves a change in any Contract Documents, the Contract Price, the Project Schedule, or any other change requiring a written Change Order or Amendment, the parties shall execute an appropriate written Change Order or Amendment pursuant to the terms of the Contract Documents.

C. MEDIATION

1. Unless extended by written agreement of the parties involved in the dispute, any Claim not resolved through the DRR process set forth above within five (5) calendar days after the meeting required under B (4) above, or after the DRR is terminated pursuant to ¶ B (5) above, whichever is earlier, shall be submitted to mediation as a condition precedent to litigation by either party.

2. The mediation shall be commenced by written demand upon the other party for mediation. If the parties cannot agree upon a mediator within ten (10) calendar days of the written demand, either party may make a request to the Civil Presiding Judge of the Maricopa County Superior Court to appoint a mediator. The mediation shall occur within forth (40) calendar days of the written demand for mediation, unless the parties agree, in writing, to a longer period of time.

3. The qualifications for the mediator shall be that he/she be: (a) an experienced mediator, arbitrator or litigator of construction disputes; and (b) having engaged a significant portion of his/her time involving and/or resolving construction disputes for at least the past five (5) years.

4. Each party shall provide to the other party and the mediator all of the information and documentation required under B(1) and (2) above, together with any additional information and documentation which the party believes relevant. In addition, the parties shall exchange, and provide to the mediator such additional memoranda, information and/or documentation, as the mediator may request, and in the form and at such times, as the mediator may direct.

5. The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in Mesa, Arizona, unless another location is mutually agreed upon. Agreements reached in mediation shall be specifically enforceable in any court having jurisdiction thereof.

D. LITIGATION

Any claim arising out of or related to the Contract, except Claims relating to aesthetic effect and except those claims waived as provided for in the Contract Documents, shall be resolved through litigation in the Maricopa County, Arizona Superior Court
.

COSTS OF THE WORK

SECTION 1 – COSTS TO BE REIMBURSED

1.1 Cost of the Work

The term Cost of the Work shall mean costs necessarily incurred by Contractor in the proper performance of the Work. Such costs shall be at rates not higher than the standard paid at the place of the Project except with prior consent of City. The Cost of the Work shall include only the items set forth in this Section 1.

1.2 Labor Costs

1.2.1 Wages of construction workers directly employed by the Contractor to perform the construction of the Work at the site or, with City's approval, at off-site workshops. Cost to be reimbursed will be the actual wages paid to the individuals performing the work.

1.2.2 Wages or salaries of the Contractor's supervisory and administrative personnel when stationed at the site with City's approval. No Contractor personnel stationed at the Contractor's home or branch offices shall be charged to the Cost of the Work. Non-field office based Contractor management and support personnel are expected to provide service and advice from time to time throughout the job and his/her time devoted to Project matters is considered to be covered by the Contractor's Fee.

1.2.3 Wages and salaries of Contractor's supervisory or administrative personnel who would normally be stationed at the field office in accordance with Section 1.2.2 but who become engaged, at factories, workshops or on the road, in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of his/her time required for the Work. Employee bonuses and/or costs associated with Employee Stock Ownership Plans ("ESOP") will not be considered reimbursable labor or labor burden costs and will be considered non-reimbursable costs considered to be covered by the Contractor's Fee.

1.2.4 Costs paid or incurred by Contractor for taxes, insurance, contributions, assessments and benefits required by law or collective bargaining agreements and, for personnel not covered by such agreements, customary benefits such as sick leave, medical and health benefits, holiday, vacations and pensions, provided such costs are based on wages and salaries included in the Cost of the Work under Subparagraphs 1.2.1 through 1.2.3.

1.2.4.1 Cost of the Work shall include the actual net cost to Contractor for worker's compensation insurance attributable to the wages chargeable to the Cost of Work per this Agreement. The actual net cost of worker's compensation shall take into consideration all cost adjustments due to experience modifiers, premium discounts, policy dividends, retrospective rating plan premium adjustments, assigned risk pool rebates, any applicable weekly maximums, etc. Contractor may charge an estimated amount for worker's compensation insurance costs, but will make appropriate cost adjustments to actual costs within 45 days of receipt of actual cost adjustments from the insurance carrier.

1.2.4.3 Overtime wages paid to salaried personnel (if approved in advance in writing by City) will be reimbursed at the actual rate of overtime pay paid to the individual. No time charges for overtime hours worked on the Project will be allowed if the individual is not paid for the overtime worked.

1.2.4.4 Any overtime premium or shift differential expense to be incurred by Contractor for hourly workers shall require City's advance written approval before the incremental cost of the overtime premium or shift differential will be considered a reimbursable cost. If the Contractor is required to work overtime as a result of an inexcusable delay or other coordination problems caused by the Contractor or anyone he/she is responsible for, the overtime premium and/or shift differential expense portion of the payroll expense and related labor burden costs will be considered as cost not to be reimbursed.

1.2.4.5 Reimbursable labor burden costs will be limited to payroll taxes, worker's compensation insurance, the employer's portion of union benefit costs for union employees working on the Project, and the actual verifiable fringe benefit costs incurred by Contractor for non-union individuals working on the Project subject to the following maximum percentages for the following reimbursable non-union fringe benefit costs. The following maximums (as a percentage of reimbursable actual wages by individual) shall apply for each of the following types of fringe benefit costs specifically attributable to each of the non-union personnel working on the Project:

- Medical Insurance, Dental, Life & AD&D Insurance: 12.00%
- Holiday, vacation and other paid time not worked: 10.00%
- Pension Plan Contributions to Vested Employee Account, Simplified Employee Pension Plans, or 401K matching plans (Note: ESOP related costs are covered by the Contractor Fee) 10.00%

For non-union personnel, no other fringe benefit costs (other than the three specific categories listed immediately above, shall be considered reimbursable Cost of Work. Any labor burden costs that are in excess of the amounts considered reimbursable or are otherwise not considered reimbursable under the terms of this agreement are intended to be covered by the Contractor Fee.

1.3 Subcontract Costs

1.3.1 Payments made by Contractor to Subcontractors in accordance with the requirements of the subcontracts.

1.3.2 For Scope of Work Bid Packages typically performed by Subcontractors, Contractor may "self-perform" such work on an actual cost basis subject to an agreed upon Guaranteed Maximum Price for the "self-performed work". The Contractor shall, unless agreed to by City in writing, bid his/her proposed guaranteed Maximum Price for the work to be "self-performed" against at least three other interested trade Contractors. All savings under any such Subcontract for "self-performed work" shall be applied to reduce the Cost of Work under the Contract and the Guaranteed Maximum Price. For purposes of defining "self-performed work" subject to this provision, any division of Contractor, or any separate Contractor or Subcontractor that is partially owned or wholly owned by the Contractor or any of his/her employees or employee's relatives will be considered a related party entity and will be subject to this provision regarding "self-performed work". No self-performed work will be allowed to be performed on a Fixed Price basis.

1.3.3 Contractor (with respect to its Suppliers, Subcontractors and all lower tier Subcontractors) shall provide City advance written notice and shall obtain City's approval for any proposed Subcontract Change Order, Material Purchase Order, or other financial commitment in an amount in excess of $5,000 prior to placing such order or entering into such agreement (regardless of whether or not any such commitment will affect the prime contract Guaranteed Maximum Cost). It is agreed that sums applicable to any Subcontract Change Order, Purchase Order or other financial commitment entered into in violation of the above notice and approval requirement shall not be included in the amounts owning to Contractor, Subcontractors or Suppliers whether as Costs of the Work or as reasonable termination costs in the event of termination.

1.4 Costs of Material and Equipment Incorporated in the Completed Construction

1.4.1 Costs, including transportation and storage, of materials and equipment incorporated or to be incorporated in the completed construction.

1.4.2 Costs of materials described in the preceding Subparagraph 1.4.1 in excess of those actually installed to allow for reasonable waste and spoilage. Unused excess materials, in any, shall become City's property at the completion of the Work or, at City's option, shall be sold by the Contractor. Any amounts realized from such sales shall be credited to City as a deduction from the Cost of Work.

1.4.3 Proceeds from the sale of recyclable materials, scrap, waste, etc. shall be credited to job cost.

1.5 Costs of Other materials and Equipment, Temporary Facilities and Related Items

1.5.1 Costs, including transportation and storage, installation, maintenance, dismantling and removal of materials, supplies, temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers, that are provided by the Contractor at the site and fully consumed in the performance of the Work; and cost (less salvage value) of such items if not fully consumed, whether sold to others or retained by Contractor. Cost for items previously used by Contractor shall mean fair market value.

1.5.2 Rental charges for temporary facilities, machinery, equipment, and hand tools not customarily owned by construction workers that are provided by Contractor at the site, whether rented from Contractor or others, and costs of transportation, installation, minor repairs and replacements, dismantling and removal thereof. Rates and quantities of equipment rented shall be subject to City's prior written approval.

1.5.2.1 The Projected usage for each piece of equipment to be rented for use on the Project and the estimated total rentals shall be considered by Contractor before the piece of equipment is rented so that an appropriate rent versus buy decision can be made. Purchased equipment shall be considered "job owned". At the completion of the Project, Contractor shall transfer title and possession of all remaining job-owned equipment to City, or Contractor may keep any such equipment for an appropriate fair market value credit to job cost, which will be mutually agreed to by City and Contractor.

1.5.2.2 Each piece of equipment to be rented shall have hourly, daily, weekly and monthly rates and the most economical rate available shall be reimbursed based on the circumstances of actual need and usage of the piece of equipment while it is stationed at the jobsite. When the piece of equipment is no longer needed for the work, no rental charges will be reimbursed if the piece of equipment remains at the jobsite for the convenience of Contractor.

1.5.2.3 Equipment Rental Rates

1.5.2.3.1 Compensation for equipment used on the Project shall be paid in accordance with the Equipment Plan submitted by Contractor in the accepted GMP Proposal and no payments will be made in excess of the rates set forth in the Equipment Plan, or actual documented costs, whichever is less.

1.5.2.3.2 All equipment rental rates and costs are subject to City's right to audit when submitted as part of Equipment Plan and/or at any time during the Project.

1.5.2.4 The aggregate rentals chargeable for each piece of Contractor owned tools or equipment shall not exceed 50% of the fair market value of such equipment at the time of its commitment to the Work. The original purchase price and date of purchase of the equipment will be documented with a copy of the purchase invoice for the piece of equipment. Such aggregate limitations will apply and no further rentals shall be charged even if a piece of equipment is taken off the job and is later replaced by a similar piece of equipment. For purposes of computing the aggregate rentals applicable to aggregate rental limitations, rental charges for similar pieces of equipment will be combined if the pieces of equipment were not used at the same time.

1.5.2.5 Fair market value for used material and equipment as referred to in the Contract Documents shall mean the estimated price a reasonable purchaser would pay to purchase the used material or equipment at the time it was initially needed for the job. Note: This is usually lower than the price a reasonable purchaser would pay for similar new construction material or construction equipment.

1.5.2.6 All losses resulting from lost, damaged or stolen tools and equipment shall be the sole responsibility of Contractor, and not City, and the cost of such losses shall not be reimbursable under the Contract.

1.5.2.7 Contractor shall be required to maintain a detailed equipment inventory of all job-owned equipment (either purchased and charged to job cost or job-owned through aggregate rentals) and such inventory shall be submitted to City each month. For each piece of equipment, such inventory should contain at a minimum (1) original purchase price or acquisition cost (2) acquisition date (3) approved Fair Market Value at the time the piece of equipment was first used on the job and (4) final disposition.

1.5.2.8 All costs incurred for minor maintenance and repairs shall be reimbursed at actual cost. Such costs include routine and preventative maintenance, minor repairs and other incidental costs. Repairs and/or replacement of a capital nature are considered to be covered by the rental rates. Major repairs and overhauls are not considered routine and ordinary; consequently such costs are not reimbursable and are intended to be covered by the rental rates.

1.5.3 Costs of removal of debris from the Site.

1.5.4 Costs of document reproductions, facsimile transmissions and long-distance telephone calls, postage and parcel delivery charges, telephone service at the site and reasonable petty cash expenses of the site office.

1.5.5 That portion of the reasonable expenses of Contractor's personnel incurred while traveling in discharge of duties connected with the Work.

1.5.5.1 No travel expenses will be reimbursed to Contractor's representatives unless Project related travel required them to travel to a destination more than 100 miles from the Project location. Any travel involving airfare will require advance written approval by an authorized City's representative.

1.5.6 Costs of materials and equipment suitably stored off the site at a mutually acceptable location, if approved in advance by the City.

1.5.7 Reproduction costs will be the actual costs of reproduction subject to a maximum of five cents ($.05) per square foot for prints and a maximum of five cents ($.05) per 8 ½ by 11 inch page for offset print or photo copied contract documents, specifications, etc. Telephone costs will be the actual costs paid to the third party telephone company for the field office telephone.

1.6 Miscellaneous Costs

1.6.1 That portion of insurance and bond premiums that can be directly attributed to the Contract.

1.6.1.1 Contractor's actual cost for insurance shall be considered to be included within the Maximum limit for General Conditions Costs. All premiums for any insurance and bonds required for the Project shall reflect the net actual costs to Contractor after taking into consideration cost adjustments due to experience modifiers, premium discounts, policy dividends, retrospective rating plan premium adjustments, assigned risk pool rebates, refunds, etc.

1.6.1.2 The amount to be reimbursed to Contractor for all contractually required liability insurance will be actual costs not to exceed a total of .5% of the net reimbursable Cost of Work (not including liability insurance and not including fee), unless Contractor establishes to City's satisfaction that the actual cost is higher and City agree to such actual higher cost writing. If Contractor's cost of contractually required liability insurance is greater than the amount agreed to be reimbursed per this Contract Provision, the difference shall be considered to be covered by the Contractor's Fee.

1.6.2 Sales, use or similar taxes imposed by a governmental authority that are related to the Work.

1.6.3 Fees and assessments for the building permit and for other permits, licenses and inspections for which Contractor is required by the Contract Documents to pay.

1.6.4 Fees of laboratories for tests required by the Contract Documents, except those related to defective or nonconforming Work and which do not fall within the scope of ¶ 1.7.3 below.

1.6.5 Royalties and license fees paid for the use of a particular design, process or product required by the Contract Documents; the cost of defending suites or claims for infringement of patent rights arising from such requirement of the Contract Documents; and payments made in accordance with legal judgments against Contractor resulting from such suites or claims and payments of settlements made with City's consent. However, such costs of legal defenses, judgments and settlements shall not be included in the calculation of the Contractor's Fee or subject to the Guaranteed Maximum Price.

1.6.6 Data processing costs related to the Work. However, any such data processing costs will be limited to the cost of personal computer hardware used at the field office in the normal day to day administration, management and control of the Project. The aggregate charges for any such hardware shall not exceed the Fair Market Value of the hardware at the time it was brought to the field office. If the total charges for any particular piece of hardware reach an amount equal to the Fair Market Value, that particular piece of hardware shall be turned over to City whenever it is no longer needed for the Project. If Contractor elects to keep the particular piece of hardware, the job costs shall be credited with a mutually agreeable amount which shall represent the Fair Market Value of the particular piece of hardware at the time it was no longer needed for the job. Software or other costs associated with the use of computer programs shall not be considered to be a reimbursable cost and will be considered to be covered by the Contractor's Fee.

1.6.7 Deposits lost for causes other than Contractor's negligence or failure to fulfill a specific responsibility to City as set forth in the Contract Documents.

1.6.8 Legal, mediation and arbitration costs, including attorneys' fees, other than those arising from disputes between City and Contractor, reasonably incurred by Contractor in the performance of the Work and with City's prior written approval; which approval shall not be unreasonably withheld.

1.6.9 Expenses incurred in accordance with Contractor's standard personnel policy for relocation and temporary living allowances of personnel required for the Work, if pre-approved by City in writing. If City authorizes the reimbursement of relocation costs, the reimbursable relocation expenses will be limited to a maximum of $50,000 per person. Any relocation cost incurred by Contractor in excess of the amount reimbursed by City will be considered to be covered by the Contractor's Fee.

1.7 Other Costs and Emergencies

1.7.1 Other costs incurred in the performance of the Work if and to the extent approved in advance in writing by City.

1.7.2 Costs due to emergencies incurred in taking action to prevent threatened damage, injury or loss in case of an emergency affecting the safety of persons and property.

1.7.3 Costs of repairing or correcting damaged or nonconforming Work executed by Contractor, Subcontractors or Suppliers, provided that such damaged or nonconforming Work was not caused by negligence or failure to fulfill a specific responsibility of Contractor and only to the extent that the cost of repair or correction is not recoverable by Contractor from insurance, sureties, Subcontractors or Suppliers.

1.8 Related Party Transactions

1.8.1 The term "related party" shall mean a parent, subsidiary, affiliate or other entity having common ownership or management with Contractor; any entity in which any stockholder in, or management employee of, Contractor owns any interest in excess of ten percent in the aggregate; or any person or entity which has the right to control the business or affairs of Contractor. The term "related party" includes any member of the immediate family of any person identified above.

1.8.2 If any of the costs to be reimbursed arise from a transaction between Contractor and a related party, Contractor shall notify City in writing of the specific nature of the contemplated transaction, including the identity of the related party and the anticipated cost to be incurred, before any such transaction is consummated or cost incurred. If City, after such notification, authorizes in writing the proposed transaction, then the cost incurred shall be included as a cost to be reimbursed, and Contractor shall procure the Work, equipment, goods or service from the related party, as a Subcontractor. If City fails to authorize the transaction, Contractor shall procure the Work, equipment, goods or service from some person or entity other than a related party.

SECTION 2 – COSTS NOT TO BE REIMBURSED

2.1 The Cost of Work shall not include:

2.1.1 Salaries and other compensation of Contractor's personnel stationed at Contractor's principal office or offices other than the site office, except as specifically provided in Subparagraphs 1.2.2 and 1.2.3.

2.1.2 Expenses of Contractors' principal office and offices other than the site office.

2.1.3 Overhead and general expenses, except as may be expressly included in Section 1.

2.1.3.1 Costs of Contractor's home office computer services or other outside computer processing services shall be considered overhead and general expense. Accordingly, Contractor should not plan to perform any such computer related services or alternatives at the field office when such services or functions can be performed at Contractor's home or branch offices, or other outside service locations.

2.1.4 Contractor's capital expenses, including interest on Contractor's capital employed for the Work.

2.1.5 Rental costs of machinery and equipment, except as specifically provided in subparagraph 1.5.2.

2.1.6 Except as provided in Subparagraph 1.7.3 of the Agreement, costs due to the negligence or failure to fulfill a specific responsibility of Contractor, Subcontractors and Suppliers or anyone directly or indirectly employed by any of them or for whose acts of them may be liable.

2.1.7 Any cost not specifically and expressly described in Section 1.

2.1.8 Costs, other than costs included in Change Orders approved by City that would cause the GMP to be exceeded.

SECTION 3 – DISCOUNTS, REBATES, REFUNDS AND SAVINGS

3.1 Cash discounts obtained on payments made by Contractor shall accrue to City if (1) before making the payment, Contractor included them in an Application for Payment and received payment therefore from City, or (2) City has deposited funds with Contractor with which to make

payments; otherwise, cash discounts shall accrue to Contractor. Trade discounts, rebates, refunds and amounts received from sales or surplus materials and equipment shall accrue to City, and Contractor shall make provisions so that they can be secured.

3.1.1 Cost of the Work will be credited with all insurance policy discounts, performance and payment bond rebates or refunds, refunds or return premiums from any Subcontractor default insurance, refunds or rebates from any Contractor controlled insurance programs applicable to the Project, merchandise rebates of any nature, refunds of any nature, insurance dividends; and a portion of any volume rebates or free material credits earned with purchase of material or other goods and services charged to the job.

3.1.2 "Cash" discounts which may accrue to Contractor will be limited to a maximum of 1.5% of invoice cost. Any portion of "Cash" discounts greater than 1.5% shall automatically accrue to City if Contractor is eligible to take advantage of the discounts.

3.2 Amounts that accrue to City in accordance with the provisions of Paragraph 3.1 shall be credited to City as a deduction from the Cost of the Work.

3.3 Any and all savings on the GMP, or any separately guaranteed items comprising the GMP, shall belong to City, subject to any express right in the Contract for Contractor to share in savings. Savings are subject to City's right to audit, and may be audited separately.

SECTION 4 – GENERAL CONDITIONS COSTS

4.1 General Conditions Costs may include, but are not limited to, the following types of costs incurred by Contractor during construction of the Work to the extent they are reimbursable Costs of the Work as delineate above: payroll costs for Work conducted at the site, payroll costs for the superintendent and full-time general foremen, payroll costs for management personnel resident and working on the site workers not included as direct labor costs engaged in support (e.g. loading/unloading, clean-up, etc.), administrative office personnel, costs of offices and temporary facilities including office materials, office supplies, office equipment, minor expenses, utilities, fuel, sanitary facilities and telephone services at the site, costs of liability insurance premiums not included in labor burdens for direct labor costs, costs of bond premiums, costs of consultants not in the direct employ of Contractor or Subcontractors, fees for permits and licenses.

4.2 General Conditions Costs may be paid on a percentage of the Contract Price or on a lump/stipulate sum basis as set forth in the Contract. All costs included in the General Conditions Costs shall not be separately invoiced to or paid by City.

4.3 The total amount of General Conditions Costs for the Work may be divided by the number of days allowed for performance of the Work, to determine a fixed daily rate for General Conditions Costs that may be used in computing the General Conditions Costs allocated to any period of time, or for any adjustments in the General Conditions Costs agreed to in writing by City.